

IN THE MATTER OF :)
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)
 Petitioner)
 v.)
)
 SPECIAL SCHOOL DISTRICT OF)
 ST. LOUIS COUNTY,)
)
 Respondent)
 COVER SHEET

- 1

6. SSD requested an extension of the time lines through October 1, 2002 by letter dated August 27, 2002. The Hearing Chairperson extended the time lines to October 1, 2002 by letter dated September 3, 2002.
7. The hearing in this matter was conducted on September 19, 2002 in St. Louis, Missouri.
8. At the hearing the parties jointly requested an extension of the time lines through October 8, 2002. The Hearing Chairperson extended the time lines to October 8, 2002 by letter dated September 23, 2002.

**BEFORE THE HEARING PANEL
EMPOWERED BY THE
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

IN THE MATTER OF :

Petitioner

v.

**SPECIAL SCHOOL DISTRICT OF
ST. LOUIS COUNTY,**

Respondent

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER**

The Hearing Panel, after conducting the due process hearing in this matter on September 19, 2002 issues the following Findings of Fact, Conclusions of Law, Decision and Order:

I. FINDINGS OF FACT

The Hearing Panel makes the following Findings of Fact:

A. The Parties

1. (“Student”) attends Captain Elementary School in the Clayton School District (“Clayton”). Student’s Parents were divorced on.
2. Student’s Mother has primary legal custody and primary physical custody of Student and has, during all times material to this proceeding resided within the boundaries of the Mehlville R-IX School District (“Mehlville”) and the Special School District of St. Louis County (“SSD”). Student’s Mother is a medical doctor. She is literate and her primary mode of communication is English. Student’s Mother is not a party to this due process proceeding.
3. Student’s Father has physical custody of Student on every Wednesday and Thursday night and every other Friday though the weekend and at other times as will be further discussed below. Student’s Father is also a medical doctor. He is literate and his primary mode of communication is English. During all times material to this proceeding, Student’s Father has resided within the boundaries of the Parkway C-2 School District (“Parkway”) and SSD. Student’s Father initiated this due process proceeding.
4. Student’s younger sister, who is not a child with a disability, resides with him and attends elementary school in the Mehlville School District.

5. Parkway, Mehlville and Clayton are not parties to this due process proceeding.
6. SSD is a special school district organized pursuant to Section 162.845 *et seq.* RSMo. Mehlville, Parkway and Clayton are Missouri school districts organized pursuant to Missouri statutes.
7. The Student and Student's Father were represented at the hearing by Margaret M. Mooney, Lashley & Baer, P.C., 714 Locust Street, St. Louis, MO 63101. Prior to the hearing the Student's Father was provided with *The Procedural Safeguards for Children and Parents*. Student's Father is a medical doctor. He is literate and uses English as his primary language.
8. SSD was represented by James Thomeczek, Thomeczek Law Firm, L.L.C., 1120 Olivette Executive Parkway, Suite 210, St. Louis, Missouri 63132.
9. The Hearing Panel for the due process proceeding was:

Ransom A Ellis, III, Hearing Chairperson
Dr. Richard Goldbaum, Panel Member
Mr. Keith Schulte, Panel Member
10. During all times relevant to this proceeding the following persons were employed by SSD, Mehlville, Parkway or Clayton and provided educational services to the Student:

| | |
|----------------------|--|
| Dr. Peter T. Kachris | Superintendent |
| Christine Montgomery | Director of Special Education |
| Leora Andrews | Compliance Liaison of Legal Services |
| Sandra Rosell | Principal, Captain Elementary School |
| Kenneth Alexander | Area Coordinator, Deaf/Hard of Hearing |
| Shirley Francis | Director of Transportation |
| Lee Scissors | Classroom Teacher |
| Monica Rapp | Special Education Teacher |

B. Procedural Background

11. On or about July 24, 2002, the Student's Father sent a letter to DESE requesting a due process hearing. (HP Exh 1) The request for the due process hearing was received by DESE on July 24, 2002.
12. On or about July 25, 2002 Ms. Pam Williams, Director for Special Education Compliance at DESE notified the Student's Counsel (HP Exh 2) that the request for due process had been received.
13. On or about August 5, 2002 Ms. Williams notified the Hearing Chairperson (HP Exh 3) and the Hearing Panel Members (HP Exh 4) that they had been selected to serve on the hearing panel for the Student's request for due process.

14. On or about August 14, 2002 the Hearing Chairperson provided the Student's Father (through Counsel) with a copy of the *Procedural Safeguards for Parents and Children* (HP Exh 5). The Hearing Chairperson also notified the parties, through their Counsel that the due process hearing had to be held, and a written decision rendered by, September 9, 2002. (HP Exh 6).
15. On or about August 27, 2002 James Thomeczek entered an appearance on behalf of SSD. (HP Exh 7).
16. On or about August 27, 2002 Counsel for SSD requested that the time lines for the decision be extended. through October 1, 2002. (HP Exh 7). On September 3, 2002 the Hearing Chairperson extended the time lines in this case to and through October 1, 2002. (HP Exh 8).
17. On September 4, 2002 the Hearing Chairperson issued a Notice of Hearing setting this matter for hearing on September 19, 2002, at 9 o'clock a.m. at the Administrative Offices of SSD in St. Louis, Missouri. (HP Exh 9).
18. On September 11, 2002 the Hearing Chairperson sent a letter to the parties which changed the location of the hearing to the Olivette Community Center in St. Louis, Missouri. (HP Exh 10)
19. Prior to the hearing in this matter, the parties entered into a Joint Stipulation of Facts which was entered into the record. (HP Exh 11).
20. Exhibits were introduced and received into evidence at the hearing. The following documents were admitted and made a part of the record in this case: Hearing Panel Exhibits ("HP Exh") 1 through 11; Parent's Exhibits ("P Exh") 1-18; and, SSD's Exhibits ("R-Exh") 1-30. (Tr pp. 6-8; 218).
21. At the hearing the parties jointly requested an extension of the time lines through October 8, 2002 on the record. (Tr pp. 219-220). By letter dated September 23, 2002, the Hearing Chairperson extended the time lines through October 8, 2002.
22. The parties were given an opportunity to provide the Hearing Panel with a brief or written statement of position following the hearing. Post-Hearing Briefs were received from Counsel for both parties.

C. Time Line Information

23. On or about July 24, 2002, the Student's Father sent a letter to DESE requesting a due process hearing. (HP Exh 1) The request for the due process hearing was received by DESE on July 24, 2002. The initial time line for mailing the decision in this case was September 9, 2002.
24. On or about August 27, 2002 Counsel for SSD requested that the time lines for the decision be extended. through October 1, 2002. (HP Exh 7). On September 3, 2002 the Hearing Chairperson extended the time lines in this case to and through October 1, 2002. (HP Exh 8).

25. At the hearing on September 19, 2002 the parties jointly requested an extension of the time lines through October 8, 2002 on the record. (Tr pp. 219-220). By letter dated September 23, 2002, the Hearing Chairperson extended the time lines through October 8, 2002.

D. The Issues And Relief Requested

26. The parties agreed that the following issue could be presented to the Hearing Panel:

“Whether SSD should be required to provide transportation from the Student’s Father’s home in the morning to Captain Elementary School on those days when the Student is with his Father pursuant to the Family Court Parenting Plan.”

(Tr pp. 6-7).

27. As a remedy, the Student’s Father requested that the Panel provide the following:

A. Provide transportation from the Student’s Father’s home in the morning to Captain Elementary School on those days when the Student is with his Father pursuant to the Family Court Parenting Plan;

B. Provide compensatory education to the Student for the additional time spent in transportation after SSD refused to provide the requested transportation;

C. Reimburse the Student’s Father for the transportation he provided for the Student from the Father’s home on those days when the Student was with the Father pursuant to the Family Court Parenting Plan and after SSD refused to provide the requested transportation.

(Tr pp. 62-63).

E. Background Facts

28. When the Student was born, he suffered complications associated with his birth. The Student’s early development was delayed and the Student did not walk until about one and one-half years of age. The Student was evaluated at Loyola University in Chicago at the age of two and one-half. At that time, the Student was diagnosed as having a hearing loss due to Mondini Syndrome and was prescribed hearing aids. Subsequently, the Parents and the Student moved to St. Louis and enrolled the Student in the parent/infant program at Central Institute for the Deaf (“CID”). (HP Exh 11, ¶ 9; Tr pp. 26-27).

29. In December, 1995, the Student was involved in an automobile accident and sustained a closed head injury. Following the accident, the Student had one grand mal seizure while at school. The Student received some neurological follow-up from Dr. Altman in St. Louis. The Student is not currently taking seizure medications. The Student has also been seen by Dr. Garrett Burris, a pediatric neurologist in St. Louis. (HP Exh 11, ¶¶ 10 and 11).

30. The Student attended CID and from the age of five through the Spring of 2001, the Student attended the Moog Center for the Deaf in St. Louis (“Moog”). (HP Exh 11, ¶ 12; Tr p. 27).

31. On November 7, 2000 the Family Court of St. Louis County, Missouri entered a Judgment Pending Dissolution Proceeding in the Student’s Parents’ divorce proceeding. As a part of the Judgment, the Court granted physical custody of the Student and his sister to the Student’s Mother and established a Parenting Plan which set forth the Physical Custody and Visitation for both the Student and his sister. (R Exh 2).

32. In December, 2000 the Parents sought services for the Student from SSD. The Parents provided consent to evaluate the Student and pre-evaluation conferences were held with each Parent separately – the Father on January 31, 2001 and the Mother on February 9, 2001. (HP Exh 11, ¶ 13; Tr p. 27).

33. The Student’s initial evaluation was completed on February 14, 2001. (HP Exh 11, ¶ 14). The following tests were administered:

- a. Comprehensive Test of Non-Verbal Intelligence (CTONI) – The Student obtained a score of 103, which placed him in the average range.
- b. Childhood Autism Rating Scale (CARS) – The Student was rated at a 36, which falls in the mildly autistic range.
- c. Wechsler Individual Achievement Test (WIAT) – The Student obtained a Reading Composite of 97, a Math Composite of 95, a Writing Composite of 90 and a Written Expression Score of 84.
- d. Clinical Evaluation of Language Fundamentals (CELF) – The Student obtained a receptive language score of 98, an Expressive Language score of 84 and a Total Language score of 90.
- e. One-Word Expressive Picture Vocabulary Test – Revised – The Student obtained a score of 95.

34. On February 14, 2001 the Student’s diagnostic team determined that the Student had a profound sensorineural hearing loss in the right ear and a moderate sloping to profound hearing loss in the left ear with bilateral Mondini malformation of the cochlea. (R Exh 10, p 047). The diagnostic team found that the Student was qualified for special education services with diagnoses of deaf and autism. (HP Exh 11, ¶ 15).

35. The Student’s Mother’s address is listed as the primary educational address for the Student on SSD’s Diagnostic Report. (R Exh 6, p. 018).

36. No procedural or substantive issues regarding the appropriateness of the screening or the evaluation of the Student were raised in this case.

37. Following the evaluation, the Student completed the school year at Moog. (HP Exh 11, ¶ 16; R Exh 8, p. 039).

38. On May 15, 2001 the Student's IEP Team met to prepare his IEP. The IEP Team developed an IEP that had five goals which addressed social skills and classroom functioning with an emphasis on pragmatic language, articulation, language content in conversations and in writing, language form in written activities and pragmatic skills using spontaneous language. The IEP Team also determined that:

A. Transportation was "required as a related service" (P Exh 3, p. 2) with seatbelts requested. (P Exh 3, p. 11);

B. An annual audiological assessment and daily monitoring of the Student's hearing aids would be conducted. (P Exh 3, p. 10)

C. The Student's placement would be "self-contained class for deaf/hard of hearing in a general education setting." The IEP specifies that the Student would spend seventy-six percent (76%) of his instructional week in the special education setting and the Student would be integrated in Inquiry Lab, Music, Art and Physical Education. (P Exh 3, p. 2). The proposed placement was at Captain Elementary School in the Clayton School District, which has an auditory-oral deaf/hard of hearing special education classroom. (Tr p. 28).

D. The Meville School District is listed at the Student's "home district." (R Exh 10, p. 041).

(HP Exh 11, ¶¶ 18-21; R Exh 10, pp. 041-070).

39. At the time of the development of the May 15, 2001 IEP, the Student's Father resided a short distance from the Student's Mother. Following development of the IEP, the Student's Father moved to his current residence in southwest St. Louis County. The Father's reasons for moving included selecting a location which was close to a school which had been mentioned as a possible placement location during the IEP meeting and being in an area which had a higher number of Indian families. (Tr pp. 33-34).

40. The Student's Father signed the consent for initial placement on May 15, 2001. The Student's Mother signed the consent for initial placement on May 16, 2001. (R Exh 10, p. 060; HP Exh 11, ¶ 22; Tr pp. 28-29).

41. No procedural or substantive issues relating to the preparation or content of the Student's school year 2001-02 IEP or placement were raised in this case.

42. Beginning in school year 2000-01, SSD began a review of its transportation services for the purpose of providing the most efficient service. One practice that SSD decided to eliminate was the practice of providing transportation services to multiple locations where the student's parents were divorced, unless the transportation was deemed to be medically necessary for the student to benefit from the educational program. SSD grandfathered the students who were

being picked up at multiple locations and has not agreed to any new multiple location pickup arrangement, except in medically necessary situations, since that decision was made. (Tr pp. 139-143).

43. During the summer of 2001, a trial was held on the contested issues in the divorce proceedings between the Student's Mother and Father. On August 18, 2001 the Student's Mother wrote Captain Elementary School and SSD threatened them that they would "face legal consequences" if they agreed with Student's Father to change the Student's transportation arrangements without judicial authorization. (R Exh 11, p. 071). Shortly after that, Student's Father requested that SSD provide transportation for the Student from his house on those days when the Student stayed there. (R Exh 12, p. 072). Student's Father's letter was followed by a letter from Student's Mother's attorney, dated August 24, 2001, which requested that SSD "disregard" the Father's request. (R Exh 13, p. 073).

44. On September 12, 2001 SSD, through its counsel, provided the attorneys for Student's Father and Mother with a Notice of Action Refused. In so doing, SSD refused to provide periodic transportation pick-up services for the Student from his Father's house. (R Exh 14, pp. 074-083).

45. At the beginning of school year 2001-02, the Student was assigned to the deaf/hard of hearing classroom at Captain Elementary School, which is located in the Clayton School District. (HP Exh 11, ¶ 23). Captain offers an auditory-oral program. (Tr pp. 102-103).

46. During the first part of school year 2001-02, through approximately January or February 2002, Student's Father transported the Student to his Mother's house in the morning so Student could ride the bus on his normal route. During the remainder of the school year the Student's Father transported the Student directly to Captain Elementary School. (Tr pp. 94-96).

47. Since being placed in the deaf/hard of hearing classroom at Captain Elementary School, the Student has made steady progress on the goals and objectives set forth in his IEP. (Tr pp. 172-176; R- Exh 21, pp. 119-121).

48. On November 21, 2001 the Student's Father provided SSD with a copy of the divorce decree of the Student's Parents. (R Exh 17, p. 096; Tr p. 35). The divorce decree contained a Parenting Plan which provided the following with respect to the Student:

A. Student's Mother was granted primary physical custody of the Student and his sister.

B. Visitation and residential time for Student and his sister were subject to the agreement of Student's Mother and Father.

C. In the event Student's Mother and Father were unable to agree on visitation and residential time, then the Father was given visitation and residential time as follows:

1) Every other weekend beginning with the end of the school day on Friday through the beginning of the next school day on Monday.

- 2) Two nights each week from the end of the school day on Wednesday through the beginning of the school day on Friday.
- 3) Holidays are divided.
- 4) Student and his sister shall be with each Parent on the Parent's birthday.

Since the Parenting Plan encourages the Student's Parents to agree on visitation and residential time, the location of the Student for transportation purposes may be decided on a day-to-day or even hour-to-hour basis.

49. The Parenting Plan also provided the following with respect to the transportation of the Student:

"4. Transportation: Unless the parties agree otherwise, the children shall, at the beginning of each custody or visitation period be picked up from and, at the end of each custody or visitation period, be returned to the children's school, day care provider of the residence of Mother, as appropriate, by Father at Father's expense, with the exception of [the Student's] transportation to and from school. [The Student] will take the bus home from school to Mother's residence everyday. On the days of Father's overnight custody, [the Student] may take the bus to school from Father's residence. Both parties shall cooperate with the Special School District to facilitate said transportation."

(HP Exh, ¶ 24; P Exh 4). SSD was not a party to the Parenting Plan. (Tr pp. 60-61).

50. On December 6, 2001 SSD responded to Student's Father's request that the Student be provided transportation from the Father's home on those days when the Student was with the Father pursuant to the Parenting Plan by providing notice of action refused in a letter from SSD's legal counsel. (HP Exh 11, ¶ 25; P Exh 6; R Exh 19, pp. 107-110).

51. During the remainder of school year 2001-02, Student's Father provided transportation for the Student from Father's home on those days when the Student was with him pursuant to the Parenting Plan to Captain Elementary School. (Tr p. 37). The Student's Father testified that on the days when he transported the Student to the Student's Mother's home to catch the bus, the trip took approximately thirty (30) minutes. (Tr pp. 54; 79; 83; 96). When Student's Father transported him directly to Captain Elementary School it generally took thirty to forty minutes. (Tr pp. 94-96).

52. On May 15, 2002 the Student's IEP Team met to prepare an IEP for Student for school year 2002-03. The IEP Team developed an IEP that has seven goals and includes two hundred twenty-five (225) minutes of language per week, thirty (30) minutes of consultation in a special education setting per week and one hundred twenty (120) minutes of speech therapy in a general education setting per week. The IEP Team also determined that:

- A. The Student would be provided ten (10) minutes per week of consultation from a counselor for the deaf. (R Exh 21, p. 126).

B. The Student would receive one thousand two hundred seventy-five (1275) minutes per week of an assistive listening device. (R Exh 21, p. 126).

C. Additional testing in the area of speech would be performed on the Student.

D. Transportation was required as a related service with the accommodations of seat belts and curb-to-curb. (R Exh 21, p. 126).

E. The Mehlville School District is listed at the Student's "home district." (R Exh 21, p. 113).

F. The Student's Mother's address is listed as the Student's "current address" and Student's Father's address is not listed. (R Exh 21, p. 113).

(HP Exh 11, ¶¶ 26-27 and 31-32; R Exh 21, pp. 113-139).

53. The Student's IEP Team recommended a change of placement from the self-contained special education class to a program outside the regular classroom less than twenty-one percent (21%) of the time. (HP Exh 11, ¶30; P Exh 21, p. 127).

54. No procedural or substantive issues relating to the preparation or content of the Student's school year 2002-03 IEP or placement were raised in this case.

55. The last day of school at Captain Elementary School during school 2001-02 was June 7, 2002. (HP Exh 11, ¶ 33).

56. The first day of school at Captain Elementary School during school 2002-03 was August 27, 2002. (HP Exh 11, ¶ 34).

57. SSD serves twenty-three (23) school districts in St. Louis County including Mehlville and Parkway. In addition to special education services, SSD provides transportation services for the special education students it serves. SSD maintains three (3) bus routes which serve the special education students who are placed at Captain Elementary School – north, central and south routes. During school year 2002-03 each of these buses provides transportation for three (3) students who have been placed in the deaf/hard of hearing program at Captain Elementary School. The Student rides the south route when he is picked up at this Mother's home. If the Student were to be picked up from his Father's home it would be by a bus on the central route.

58. Shirley Francis testified that the following problems would occur if buses had to be re-routed to pick up the Student at his Father's house on an intermittent basis, as required by the Parenting Plan:

A. Each of the three routes for Captain Elementary School is carefully choreographed so that the pick-up time for each special education student on the route is set to eliminate the waiting time for the student.

B. Each time the north or central routes are changed, the transportation of five (5) students, including two (2) physically impaired students on each route are affected.

C. Student's Father does not reside in a direct line from the first central route's first pick-up to its second pick-up. Imposing an additional stop on the route would impact the other students on the route in that the bus would have to adjust the established pick-up times. The same is true for the south bus route which picks the Student up at his Mother's house. On that route, the Student's stop is the second stop on the south bus route. The first student on the route is picked up at 7:07 a.m. The Student is picked up at 7:28 a.m. from his Mother's house and the third student on the route is picked up at 7:51 a.m. The bus arrives at Captain Elementary School at 8:20 a.m. Scheduling the Student on and off the south route creates a wide variance in the pick-up time for either the first or third student on the route.

D. In order for the Student to be picked-up at the Father's home by the central bus route, the bus would have to proceed south into a highly congested southwest corridor of St. Louis County.

59. Establishing an on-again, off-again transportation system for the Student, as requested by the Student's Father, which is wholly dependent upon where the Student resided the night before, would be disruptive to the transportation of at least four, and as many as six other children with disabilities who attend Captain Elementary School by causing varying pick up times and longer time on the bus.

60. While transportation has been listed as a "related service" on the Student's school year 2001-02 and 2002-03 IEPs, the transportation of the Student is not medically necessary for the Student to benefit from the education program. Sandra Rosell, Principal at Captain Elementary School described the Student as a "delightful student" who has made a "wonderful transition" from Moog to the educational program there. (Tr p. 162). Ms. Rosell, Monica Rapp, the Student's special education teacher and Lee Scissors, the Student's regular education classroom teacher stated they were unaware of any issue related to the Student's anxiety over his transportation to or from school, and could not tell how the Student was transported to school. (Tr pp.163-167; 172-173; 185-187). The Student's Mother testified that she believes the Student has been "happy" this school year (Tr p. 209) and any previous problems with anxiety and constipation were due to the Student having moved from Moog, a private school, to a larger public school setting. (Tr p. 209).

61. During all times when the Student has been attending Captain Elementary School, SSD has provided, or made transportation available for the Student from his Mother's house, which is his legal residence, each school day to the Captain Elementary School in the morning and back to his Mother's house in the evening.

62. The transportation requested by the Student's Father, from his house on mornings when the Student has been at his house to Captain Elementary School, is not medically necessary for the Student to benefit from the educational program. Such transportation is, however, for the convenience of the Student's Father who chose to locate his house some distance from the

Student's Mother's house and the SSD bus that is scheduled to transport the Student to Captain Elementary School.

II. CONCLUSIONS OF LAW

63. The Student is a "child with a disability," as that term is defined in the IDEA, its regulations, 34 C.F.R. §300.7 and the State Plan.

64. SSD is a special school district organized pursuant to Section 162.845 *et seq.* RSMo. Mehlville, Parkway and Clayton are Missouri school districts organized pursuant to Missouri statutes.

65. The Student is now and has been a resident of SSD and Mehlville during all times relevant to this due process proceeding, as defined by Section 167.020 RSMo.

66. The IDEA, its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act* (2001), ("State Plan") set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the SSD in providing special education and related services to students with disabilities.

67. The State Plan was in effect at all material times during this proceeding. The State Plan constitutes regulations of the State of Missouri which further define the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as SSD, in providing special education and related services to students with disabilities.

68. The purpose of the IDEA and its regulations is: (1) "to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs"; (2) "to ensure that the rights of children with disabilities and their parents are protected"; and, (3) "to assess and ensure the effectiveness of efforts to educate those children." 34 C.F.R. § 300.1.

69. The IDEA requires that a disabled child be provided with access to a "free appropriate public education." ("FAPE") *Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982). The term "free appropriate public education" is defined by 34 C.F.R. § 300.8 as follows:

"...the term 'free appropriate public education' means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include preschool, elementary school, or secondary school education in the State involved; and,
- (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340--300.350."

A principal component of the definition of FAPE is that the special education and related services provided to the student with a disability, “meet the standards of the SEA” (State Board of Education), and “the requirements of this part”. 34 C.F.R. Part 300.

70. If parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8th Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998).

71. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O’Toole by O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998). The IDEA requires SSD to provide a child with a disability with a “basic floor of opportunity. . . which [is] individually designed to provide educational benefit to the handicapped child.” *Rowley, supra.*, 102 S.Ct. 3034, 3047. In so doing the IDEA does not require that a school district “either maximize a student’s potential or provide the best possible education at public expense,” *Rowley, supra.*, 102 S.Ct. 3034, 3049; *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 612; and *A.W. v. Northwest R-1 School District*, 813 F.2d 158, 163-164 (8th Cir. 1987). Likewise, the IDEA does not require a school district to provide a program that will, “achieve outstanding results”, *E.S. v. Independent School District No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); that is “absolutely [the] best”, *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 505 (6th Cir. 1998); that will provide “superior results,” *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 613; or, that will provide the placement the parents prefer. *Blackmon v. School District of Springfield, R-12*, 198 F. 3d 648, (8th Cir. 1999); *E.S., supra.* 135 F.3d 566, 569. See also: *Tucker, supra.*, 136 F.3d 495, 505; and *Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education*, 938 F. 2d 712, 716-17 (7th Cir. 1991).

720 Article IX § 2(a) of the Missouri Constitution states in pertinent part that “[t]he supervision of instruction in the public schools shall be vested in a state board of education. . . .”

The State Board of Education for the State of Missouri is the “State Educational Agency” (SEA) for the State of Missouri, as that term is defined in the IDEA, 20 U.S.C. § 1401(28).

730 The IDEA, 20 U.S.C. § 1401(22) defines “related services” as follows:

“The term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) **as may be required to assist a child with a disability to benefit from special education,** and includes the early identification and assessment of disabling conditions in children.” [emphasis added]

740 The IDEA Regulations, 34 C.F.R. ¶ 300.24 define “related services” as follows:

“(a) General

As used in this part, the term *related services means transportation* and such developmental, corrective, and other supportive services *as are required to assist a child with a disability to benefit from special education*, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) Individual terms defined

The terms used in this definition are defined as follows:

.....

(15) Transportation includes –

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.”

[Emphasis Added].

750 Student’s Mother’s house in the Mehlville School District is the Student’s principal residence for educational purposes. Student’s Mother has sole legal custody and primary physical custody of Student.

760 To the extent that is required by the facts in this case and the issue presented to the Hearing Panel, the Student is being provided FAPE by SSD and SSD has not committed a procedural or substantive violation of the IDEA or the State Plan.

770 SSD is in compliance with the IDEA and the State Plan with respect to the transportation of the Student. Neither the IDEA nor the State Plan require SSD to provide transportation from the Student’s Father’s house, as a related service, when the transportation service is provided from the Student’s legal residence at his Mother’s house, unless it is medically necessary for the Student to have the transportation service in order to benefit from the educational program.

780 The Student is not entitled to receive compensatory education for the additional time spent in transportation, if any, after SSD refused to provide the requested transportation in that:

A. SSD is in compliance with the IDEA and the State Plan with respect to the transportation of the Student.

B. The Student has exhibited progress with respect to the goals and objectives set forth in his IEP.

C. There is no evidence that indicates that the Student missed any portion of the educational program at Captain Elementary School as a result of any additional time he spent in transportation from his Father's house to school.

790 SSD is not required to reimburse the Student's Father for the transportation he provided for the Student from the Father's home on those days when the Student was with the Father pursuant to the Family Court Parenting Plan and after SSD refused to provide the requested transportation.

III. DECISION

800 Issue: Whether SSD should be required to provide transportation from the Student's Father's home in the morning to Captain Elementary School on those days when the Student is with his Father pursuant to the Family Court Parenting Plan.

SSD is not required to provide transportation as requested by the Student's Father in his request for due process for the following reasons:

A. While the transportation provided to the Student is a "related service", that is so only because the Student does not attend school at his home school. The Hearing Panel firmly believes that the Student is fully capable of riding a regular school bus. The only reason the Student is provided transportation is that the SSD program into which he was placed is located at Captain Elementary School.

B. Transportation for the Student to Captain Elementary School is not medically necessary, nor is it required to assist him to benefit from special education.

C. Student's Mother's house in the Mehlville School District is the Student's principal residence for educational purposes. Student's Mother has sole legal custody and primary physical custody of Student.

D. During all times when the Student has been attending Captain Elementary School, SSD has provided the Student with transportation from his Mother's house, which is his principal residence for educational purposes and his legal residence, each school day to the Captain Elementary School in the morning and back to his Mother's house in the evening.

E. The additional transportation which is requested by the Student's Father is for the convenience of the Father who chose to locate his house some distance from the Student's Mother's house and the SSD bus that is scheduled to transport the Student to Captain Elementary School.

F. Establishing an on-again, off-again transportation system for the Student, as requested by the Student's Father, which is wholly dependent upon where the Student resided the night before, would be disruptive to the transportation of at least four, and as

many as six other children with disabilities who attend Captain Elementary School by causing varying pick up times and longer time on the bus and would create additional transportation problems which are more fully described above.

G. SSD has chosen to discontinue the previous practice of multiple pick up locations for students who have more than one residence in which they reside due to divorce or other circumstances.

H. To the extent that is required by the facts in this case and the issue presented to the Hearing Panel, the Student is being provided FAPE by SSD and SSD has not committed a procedural or substantive violation of the IDEA or the State Plan.

810 Remedy A: Provide transportation from the Student's Father's house in the morning to Captain Elementary School on those days when the Student is with his Father pursuant to the Family Court Parenting Plan.

SSD is not required to provide transportation from the Student's Father's house in the morning to Captain Elementary School, as requested by the Father in this proceeding, for the reasons set forth above.

820 Remedy B: Provide compensatory education to the Student for the additional time spent in transportation after SSD refused to provide the requested transportation

The Student is not entitled to receive compensatory education for the additional time spent in transportation, if any, after SSD refused to provide the requested transportation in that:

A. SSD is in compliance with the IDEA and the State Plan with respect to the transportation of the Student.

B. The Student has exhibited substantial progress with respect to the goals and objectives set forth in his IEP.

C. There is no evidence which indicates that the Student missed any portion of the educational program at Captain Elementary School as a result of any additional time he spent in transportation from his Father's house to school.

830 Remedy C: Reimburse the Student's Father for the transportation he provided for the Student from the Father's home on those days when the Student was with the Father pursuant to the Family Court Parenting Plan and after SSD refused to provide the requested transportation.

SSD is not required to reimburse the Student's Father for the transportation he provided for the Student from the Father's home on those days when the Student was with the Father pursuant to the Family Court Parenting Plan and after SSD refused to provide the requested transportation for the reasons set forth above.

IV. ORDER

The request for due process is dismissed.

V. APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter and you have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Section 536.010 *et seq.* RSMo. Specifically, Section 536.110 RSMo. provides in pertinent part as follows:

"1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision....

3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence...

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. §300.512.

s/ Ransom A Ellis, III
Ransom A Ellis, III
Hearing Chairperson

Dated: October 8, 2002

s/Richard Goldbaum
Richard Goldbaum
Hearing Panel Member

s/Keith Schulte
Keith Schulte
Hearing Panel Member

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon each party to this action, to-wit:

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by depositing same in the United States mail at Springfield, Missouri, postage prepaid, duly addressed to said parties on this 8th day of October, 2002.

s/Ransom A Ellis, III
Ransom A Ellis, III
Hearing Chairperson